

LABOUR DEPARTMENT

The 1st October, 1987

No. 9/3/87-Lab./7186.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s. Autometers Limited, Mathura Road, Ballabgarh.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 203 of 84

Between

SHRI LALLU SINGH, WORKMAN AND THE MANAGEMENT OF M/S. AUTOMETERS LIMITED,
MATHURA ROAD, BALLABGARH

Shri S.S. Gupta, for the workman.
Shri R.N. Rai, for the management.

AWARD

1. This reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred to as the act) was made to this Court by the State of Haryana (Department of Labour) vide its endorsement No. 27028-33 dated 30th July, 1984 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Lallu Singh, workman and the respondent management of M/s. Autometers Limited, Mathura Road, Ballabgarh. Accordingly it has been registered as reference No. 203 of 84.

2. Shri Lallu Singh was employed by the respondent on 8th May, 1978 as a Helper in the Store Department and his monthly wages were Rs. 827. His allegations are that his services were terminated on 10th February, 1984 on the basis of enquiry report submitted against him by an Enquiry Officer. His grievance is that the impugned order is against law, Standing Orders, Principles of natural justice etc. According to him the so called enquiry held against him was a biased and prejudicial one and ex-parte report against him is a nullity. It has been pointed out by him that he had requested the Enquiry Officer to provide certain facilities to him the same were denied to him and more over he was proceeded ex-parte. So far as punishment is concerned according to him the same is quite disproportionate to the nature of charges levelled against him. Further his allegation is that at no stage charges levelled against him were proved since there was no evidence against him and more over no financial loss had been caused to the respondent management. Moreover according to him he was not at all Incharge of stolen item and moreover there were a Supervisor and Store Incharge also under whom he used to work and act and on the face of it the impugned order is illegal and unjustified. Accordingly request has been made by him for reinstatement into his job with continuity of service and further with full back wages also.

3. On notice the said reference has been contested by the respondent. Preliminary objection has been raised to the effect that Shri Lallu Singh did not raise any dispute directly with the respondent and as such the said reference is incompetent and a bad in law. Coming to the merits of the case, it has been admitted by the respondent that he was appointed on the claimed date as a Store Keeper. According to it, he was associated with the store and such was employed in a fiduciary relationship involving trust and confidence. Further it has been claimed that as a Store Helper he was handling material in the store worth several lacs of rupees. The finding of the Enquiry Officer against him has been claimed as being a correct one. The procedure adopted by the Enquiry Officer against him is being fully supported. It has also been pointed that in the beginning he had associated himself in the enquiry but had later on withdrawn without any cause and justification and no option was left for the Enquiry Officer except to proceed in an ex-parte manner against him. The details of numerous dates fixed in the enquiry have been detailed in para 2 of the Written Statement. Further contention has been taken to the effect that harsh punishment of dismissal has not been imposed in this case and rather his services have been terminated and accounts calculated and settled. Shri Lallu Singh has filed rejoinder and has repeated his claim as well as allegations also.

4. On the pleadings of the parties my learned predecessor had framed the following material issues on 17th October, 1984 :—

1. Whether the enquiry is fair and proper ?

2. As per reference.

5. On one hand, the respondent has examined Shri S.D. Sharma, its Personnel-cum-Administrative Officer, who was appointed in this case as an Enquiry Officer against Shri Lallu Singh. Shri Harbans Lal Batra is also an Administrative Officer. On the other hand, there is statement of Shri Lallu Singh, workman.

6. I have heard at some length. My findings on the said issues are as below:—

Issue No. 1 :

7. It is some what necessary to narrate the material aspects of the enquiry held against this workman. He was chargesheeted on 25th July, 1983 vide Ex. M-2. That was replied by him vide Ex. M-3 dated 30th July, 1983 and the same was not found as a satisfactory one. Then Shri S.D. Sharma MW-1 was appointed against him as an Enquiry Officer vide Ex. M-1 dated 9th August, 1983. He was also placed under suspension. After holding the said enquiry on several dates the Enquiry Officer had submitted report dated 28th December, 1983 Ex. M-4 holding him guilty of the said charges and relying upon the same his services were terminated on 10th February, 1984 vide Ex. M-28 and M-29. After that there is demand notice and the present reference for determination.

8. On one hand, the report submitted by the Enquiry officer and subsequently order of termination are being fully owned by the respondent on the ground that the same are legal, just and proper and in accordance with the principles of natural justice while on the other hand, it has been alleged by Shri Lallu Singh that the said enquiry as well as the order of termination are void, biased and pre-judicial against his interest and as such, the same straight way by quashed. In this respect, I have to consider the procedure adopted in the enquiry of charge-sheet. Accordingly to Exhibit M-2 Shri Lallu Singh was a Helper in the component store and was required to receive and issue components and other materials. In the steel Almirah with lock and key arrangement imported steel shafts part number WEOI.20 were kept therein and the same were needed in the production of Ampere Meters. On 13th July, 1983 planning section had issued order for the supply of 2000 shafts out of stock of 19040 but on opening the said steel almirah only 1470 shafts were made available and in this manner there was a shortage of 17570 shafts which were costly and critical items. Upon this, he and others were directed to trace the missing shafts and later on some were found lying on the cover of the drain at right corner of the store. It was further revealed that a good number of shafts were lying in the drain mixed up with mud. Then on the next day on further search one box containing shafts was found hidden in bin and rack and then preliminary enquiry was held to find out as to how the shafts had disappeared from locked almirah but he and others had failed to give any satisfactory explanation thereof. Shri Lallu Singh was directed to appear before the Enquiry Officer on 29th August, 1983 but on that date he had not turned up and was summoned for 13th September, 1983. He had come present on that date and had further come present on the next two dates (20th September, 1983 and 26th September, 1983). Shri Batra now MW-2 was examined in the presence of Shri Lallu Singh and enquiry was adjourned to 4th October, 1983 and on that date Shri Lallu Singh had left under a protest. He had not turned up on 22nd October, 1983 and thereafter as such he was proceeded *ex parte* in the matter. Now, it has been contended on behalf of Shri Lallu Singh that he was not associated in the enquiry and proper opportunities had not been afforded to defend himself and on the face of it this enquiry report is a falsely prepared statement at the instance of the respondent management. I have minutely gone through the proceedings of the enquiry and find that it was Lallu Singh, who was at fault since he had decided to bycot the enquiry for the reasons best known to him. Unfortunately there is a general tendency of the delinquent employee to bycot the proceedings against them and some time they are mis-guided to adopt this procedure. We must discourage such tendencies since every one is presumed to be innocent until and unless disapproved otherwise. Shri Lallu Singh was at fault in walking out as a protest and naturally the Enquiry Officer was left to no option except to proceed *ex parte* against him. Even at this stage, no valid ground has been advanced for bycotting the enquiry. Now, let us see the effect of bycotting the enquiry by the employee. On behalf of the respondent reliance has been made to 1961-62 Indian Factories Journal (21) page 478 Maj. U.R. Bhatt *versus* Union of India. It was held therein that when the employee declines to take part in the proceedings and fails to remain present then it will be open to the Enquiry Officer to proceed on the materials which were placed before him. Reference have also been made to 1961 Factories and Labour Reports page 526 (Vol. III) Brooke Bond *versus* Subba Raman. It was held therein that when the workman has withdrawn from the enquiry then he can be proceeded *ex parte* and it is legal and justified to proceed on the basis of *ex parte* report. In this respect there is 1956 Supreme Court reports page 916 Luxmi Devi Sugar Mills *Versus* Ram Sarup. Page 932 thereof is mos. relevant for the purposes of this case. It was held therein that in case one does not avail the opportunity of appearing before the Enquiry Officer then it is he who has to be blamed. I have gone through the statement of Shri Lallu Singh and he has conceded that he had bycotted the proceedings and in my opinion there was hardly any justification for the same. On the other hand, Shri S.D. Sharma has made a detailed statement explaining the different stages of enquiry. I have not been able to find any illegality/serious infirmity in his conduct of holding the said enquiry. Before him Shri Batra had appeared and had supported the allegations against Shri Lallu Singh. It is not disputed that workman had made several petitions before the Enquiry Officer (W-1 to W-5) but I am of the opinion that the same are without any sufficient grounds. In view of this discussion, I am of the considered opinion that there has been just and proper enquiry against him and the said issue is hereby decided in favour of the management.

Issue No 2. In this case services of Shri Lallu Singh were only terminated with one month notice pay and all other dues. It is not acceptable to Shri Lallu Singh. It has been contended on his behalf that no show cause notice was issued to him and the said order is a nullity. Reliance has been placed upon 1981 (I) LLJ page 408 *Machine Tools versus Labour Court* and 1981 (II) LLJ. page 27 *Somaranjan versus H. R. C. Engineering*. I have carefully gone through both the rulings and find that in both cases there were Model standing Orders. In the present case Model Standing Orders is not applicable since there is Certified Standing Orders Exhibit M-27. Cases of major mis-conduct are governed under Rule 28 thereof and, *vide* clause "A" thereof, there can be *ex parte* proceedings against a workman. In this way, I do not find any force in the said contention. It has also been submitted that Shri S. K. Baham was Store Incharge while Bhajan Singh was a Store Assistant and Vishnu Ram, Parbhu Dayal and Gobind Singh were Helpers and only Lallu Singh has been made scape goat and ousted from the job. On behalf of the respondent, it has been sharply reacted and contended that since then all these persons have left the job on one ground or the other. Giving details thereof, it has been pointed out that Kishan Singh had resigned on 18th July, 1983 while Vishnu Ram, Parbhu Dayal, Bhajan Singh and Gobind Singh have since compromised and settled their accounts. In this manner, I do not find that he has been isolated for the said action. As a matter of fact all his colleagues have left the job. Lastly it is submitted that order of termination passed in this case is a harsh one since charge levelled was not of grave nature. I do not agree on this ground. According to the respondent as many as 17570 costly and distinct imported shafts were found missing from the almirah and without the same production of Ampere Meters was withheld. From the point of view of production missing of shafts was a serious one and naturally there was loss of faith and confidence in the concerned employees. In my opinion, punishment given can hardly be termed as an extreme one. The order of termination hardly requires any interference.

10. In view of the above discussion, I hold that the order of termination passed by the respondent in this case was a valid one and there is no ground to interfere with the same. The reference is accordingly answered.

The 19th August, 1987.

A.S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1527, dated the 31st August, 1987

Forwarded, (four copies) to the Secretary to Government Haryana, Labour and Employment Department Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 1st October, 1987

No. 9/3/87-6Lab./7/191.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of (i) Chief Administrator, Haryana Urban Development Authority, Chandigarh, (ii) Administrator, Haryana Urban Development Authority, Estate, Sector 4, Gurgaon.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD.

Reference No. 757 of 85

between

SHRI RAM BHUL, WORKMAN AND THE MANAGEMENT OF (I) CHIEF ADMINISTRATOR, HARYANA, URBAN DEVELOPMENT AUTHORITY, CHANDIGARH (II) ADMINISTRATOR, HARYANA URBAN DEVELOPMENT AUTHORITY ESTATE, SECTOR 4, GURGAON.

Present :

Shri Mahavir Tyagi, A.R. for the workman.

None for the respondent management,

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Ram Bhul and the management of M/s. (i) Chief Administrator, Haryana Urban Development Authority, Chandigarh, (ii) Administrator, Haryana Urban Development Authority Estate, Sector 4, Gurgaon, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 49557/63, dated 6th December, 1985.

Whether the termination of services of Shri Ram Bhul is justified and in order? If not, to what relief is he entitled?

2. The claim of Ram Bhul is that he was appointed by the respondent on 1st February, 1982 as a Mali and his monthly wages were Rs. 465 and his services were terminated on 31st July, 1985. His grievance is that the same were illegally terminated and as such, he be reinstated into his job.

3. Notice was issued to the respondent but no body had appeared and as such proceeding *ex parte* vide order dated 25th February 1986 and that was revoked on its application. Written statement was filed to the effect that he had worked on daily wages for a plantation in green belt and on the completion thereof he was spared.

4. On the pleadings of the parties, the following material issues were framed on 19th May, 1986 :—

1. Whether the respondent is not an "industry" as defined under the Industrial Disputes Act, 1947?

2. As per terms of reference.

5. Shri Nirmal Singh, respondent's SDE has appeared and deposed that he had worked for 22 days only. On the other hand, there is a statement of workman Shri Ram Bhul who has stated according to the demand notice.

6. I have heard representative of this workman. Nobody has turned up on behalf of the respondent. The claim of the workman is that he was appointed by the respondent on 1st February 1982 and had worked upto 30th July, 1985. On the face of it this period is of more than 240 days and he is entitled to be termed as being in continuous service as defined in section 25B of the Industrial Disputes Act, 1947. There is no dispute that no notice pay or retrenchment compensation was paid to him and it is a clear violation of Section 25F of the Industrial Disputes Act, 1947. That order is hereby revoked and he is reinstated in his job with continuity of service and further with full back wages @ Rs. 465 w.e.f. 31st July, 1985. The reference is answered and returned accordingly with no order as to cost.

Dated 18th August, 1987.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 1515, dated 31st August, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 20th October, 1987

No. 9/1/87-6Lab./8134.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act. No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court Ambala Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s Sumeru and Seri, 219 Industrial Area, Panchkula.

BEFORE SHRI K.K. DODA, PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 214 of 1985

between

SHRI ASHOK KUMAR, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. SUMERU,
AND SERI 219, INDUSTRIAL AREA, PANCHKULA,

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ashok Kumar, workman and the respondent-management of M/S. Sumeru and Seri 219, Industrial Area, Panchkula, to this Court, for adjudication :—

Whether the termination of services of Shri Ashok Kumar is justified and in order? If not to what relief is he entitled?

Ashok Kumar's case in brief is that he was in the service of the management for the last 2½ years as a turner but his services were illegally terminated w.e.f. 18th April, 1985, without following the provisions of Section 25-F of the I.D. Act, 1947. He alleged that on 17th April, 1985 while he was on duty, he was attacked by Shri Negi and some outsider persons and he was forced to sign on two blank papers and write his own resignation letter. He had reported the incident to the police in the same evening. He went to join duty on 18th April, 1985 but was not allowed. Respondent-management repelled the contention of the workman and denied all the allegations made against them. Asserted that the workman had submitted his resignation on 16th April, 1985 and had received and accepted his full and final dues. The workman in his replication controverted the pleas taken by the management and reiterated his contentions.

3. Following issues were laid down on 25th July, 1986 by my learned predecessor:—

(i) Whether termination of services of the workman is illegal and unjustified? If so its affect?

(ii) Relief?

4. This case came up before me on 10th June, 1987 when it was pending for remaining evidence of the workman. From 10th June, 1987 case was adjourned to 25th August, 1987 for remaining evidence of the workman. It was ordered that the workman would produce his remaining evidence at his own responsibility and was granted last opportunity. It was ordered that the *dasti* summons of summoned witness could also be procured for service on them. By that day, workman had examined only one witness namely, Shri Ramji Lal, Clerk of Labour-cum-Conciliation Officer, Ambala City. Shri Abhey Singh represented the workman and Shri R.L. Chopra represented the respondent management. The workman neither appeared in the witness box on 25th August, 1987 nor any other witness was produced. W.R. Shri Abhey Singh stated at bar that the workman was perhaps not interested in pursuing his case. He submitted that workman's evidence may be closed by order. In the result there being no good ground for further adjournment workman's evidence was closed by order. M.R. Shri Chopra produced documents Ex. M-1 to M-4 and closed his case. I have gone through the entire material on report. Opportunity of hearing was given to both the parties.

5. Since the workman has not stepped into the witness box and has not examined any witness in order to prove his assertion and claim, therefore, I find no justification in entering into the case in details. It was for the workman to prove that his resignation was procured by the management by force and that he had not received dues on 16th April, 1985. It was he who was to prove that he had not received the dues on 16th April, 1985 as contended by the management. On the other hand, documents Ex. M-1 and M-2 have *prima facie* proved that the workman had written his resignation in his own hands and at his own accord and that he had received his dues also. Consequently issue No. I is decided against the workman.

6. Relief — In view of definite finding on Issue No. I, it is held that workman was not terminated but he had himself submitted his resignation and had received his dues also, from the respondent-management. He is not entitled to any relief.

Reference in question is answered accordingly.

Dated the 7th September, 1987.

K. K. DODA,

Presiding Officer,
Labour Court, Ambala.

Endst. No. 1955, dated the 21st September, 1987

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under Section 15 of I.D. Act.

K. K. DODA,

Presiding Officer,
Labour Court, Ambala.